

1 INTERIM STUDY PROPOSAL 2013-137

2 State of Arkansas

*As Engrossed: S3/20/13*

3 89th General Assembly

# A Bill

4 Regular Session, 2013

SENATE BILL 740

5  
6 By: Senator J. English

7 By: Representatives Collins, Westerman

8 Filed with: Interim Senate Committee on Revenue and Taxation

9 pursuant to A.C.A. §10-3-217.

## For An Act To Be Entitled

10  
11 AN ACT TO PROVIDE KINDERGARTEN THROUGH TWELFTH GRADE  
12 (K-12) SCHOLARSHIPS TO ECONOMICALLY DISADVANTAGED  
13 STUDENTS BY PROVIDING A TAX CREDIT FOR CONTRIBUTIONS  
14 TO NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS; TO  
15 REGULATE THE PERSONS AND ENTITIES PARTICIPATING IN  
16 THE PROGRAM TO PROVIDE K-12 SCHOLARSHIPS THAT ARE  
17 SUBJECT TO THE TAX CREDIT; TO DECLARE AN EMERGENCY;  
18 AND FOR OTHER PURPOSES.

## Subtitle

19  
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21  
22 TO PROVIDE K-12 SCHOLARSHIPS TO  
23 ECONOMICALLY DISADVANTAGED STUDENTS BY  
24 PROVIDING A TAX CREDIT FOR CONTRIBUTIONS  
25 TO NONPROFIT SCHOLARSHIP-FUNDING  
26 ORGANIZATIONS; AND TO DECLARE AN  
27 EMERGENCY.

28  
29  
30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

31  
32 SECTION 1. Arkansas Code Title 26, Chapter 51, is amended to add a new  
33 subchapter to read as follows:

34 Subchapter 26 – K-12 Scholarship Contribution Tax Credit Act

35  
36 26-51-2601. Title.

1       This subchapter shall be known and may be cited as the “K-12  
2 Scholarship Contribution Tax Credit Act”.

3  
4       26-51-2602. Purpose.

5       The purpose of this subchapter is to:

6           (1) Encourage private voluntary contributions to nonprofit  
7 scholarship-funding organizations;

8           (2) Expand educational opportunities for children of families  
9 that have limited financial resources; and

10          (3) Enable children in this state to achieve a higher level of  
11 excellence in their education.

12  
13       26-51-2603. Definitions.

14       As used in this subchapter:

15           (1) “Contribution” means a monetary contribution from an  
16 eligible taxpayer, subject to the restrictions provided in this subchapter,  
17 to a nonprofit scholarship-funding organization;

18           (2) “Eligible private school” means a nonpublic school that:

19                   (A) Provides education to elementary or secondary  
20 students;

21                   (B) Has notified a nonprofit scholarship-funding  
22 organization of its intention to participate and comply with the requirements  
23 of this subchapter and the K-12 Scholarship Tax Credit Act, § 6-18-1901 et  
24 seq.;

25                   (C) Is located in Arkansas; and

26                   (D) Is not a home school as defined in § 6-15-501;

27           (3)(A) “Eligible student” means a student who:

28                   (i) Meets one (1) of the following criteria:

29                           (a) Is a member of a household whose total  
30 annual income the year before he or she applies for an educational  
31 scholarship under this subchapter does not exceed an amount equal to two  
32 hundred fifty percent (250%) of the federal poverty level income standard;

33                           (b) Received a scholarship from a nonprofit  
34 scholarship-funding organization or from the state during the previous school  
35 year and has not graduated from high school or reached twenty-one (21) years  
36 of age; or

1                   (c) Is a sibling of a student who meets the  
2 requirement stated in subdivision (3)(A)(i)(b) of this section;

3                   (ii) Is residentially zoned in a school district  
4 with a student enrollment that exceeds one thousand (1,000) students; and

5                   (iii) Meets one (1) of the following criteria:

6                   (a) Is eligible to attend a public school in  
7 Arkansas for the first time;

8                   (b) For a student participating in the  
9 scholarship program for the first time in the 2013-2014 school year, was  
10 counted in public school enrollment in Arkansas through the fiscal year  
11 three-quarter average daily membership of the 2011-2012 school year or the  
12 2012-2013 school year;

13                   (c) For a student participating in the  
14 scholarship program for the first time in the 2013-2014 school year, was  
15 eligible to enroll in an Arkansas public school for the first time in the  
16 2012-2013 school year; or

17                   (d) For a student participating in the  
18 scholarship program for the first time after the 2013-2014 school year, was  
19 enrolled in a public school in Arkansas through the fiscal year three-quarter  
20 average daily membership of the preceding school year.

21                   (B) “Eligible student” does not mean a student who:

22                   (i) Receives a scholarship from another nonprofit  
23 scholarship-funding organization under this subchapter;

24                   (ii) Participates in a home school as defined in §  
25 6-15-501;

26                   (iii) Participates in a virtual school,  
27 correspondence school, or distance learning program that receives state  
28 funding pursuant to the student’s participation unless the participation is  
29 limited to no more than two (2) courses per school year; or

30                   (iv) Is enrolled in the Arkansas School for the Deaf  
31 or the Arkansas School for the Blind;

32                   (4) “Eligible taxpayer” means a business or individual,  
33 including without limitation a corporation, partnership, limited liability  
34 company, and sole proprietorship;

35                   (5) “Nonprofit scholarship-funding organization” means a  
36 charitable organization that:

1                   (A) Is exempt from federal income tax under 26 U.S.C. §  
2 501(c)(3) of the Internal Revenue Code, as it existed on January 1, 2013;

3                   (B) Is an Arkansas entity formed under § 4-28-101 et seq.  
4 whose principal office is located in the state; and

5                   (C) Has notified the Department of Education of its  
6 intention to participate and comply with the requirements of this subchapter  
7 and the K-12 Scholarship Tax Credit Act, § 6-18-1901 et seq.;

8                   (6) "Owner" or "operator" means:

9                   (A) An owner, president, officer, or director of a  
10 nonprofit scholarship-funding organization or a person with equivalent  
11 decision-making authority over a nonprofit scholarship-funding organization;  
12 or

13                   (B) An owner, operator, superintendent, or principal of an  
14 eligible private school or a person with equivalent decision-making authority  
15 over an eligible private school;

16                   (7) "Scholarship program" means a program that awards  
17 scholarships that are funded by contributions made under this subchapter and  
18 the K-12 Scholarship Tax Credit Act, § 6-18-1901 et seq.; and

19                   (8) "Tuition expenses" means the tuition and fees required for  
20 attendance at an eligible private school, including without limitation the  
21 costs associated with transportation.

22  
23                   26-51-2604. Tax credit for contributions.

24                   (a) Except as limited in subsection (b) of this section, there is  
25 allowed an income tax credit against the income tax imposed by the Income Tax  
26 Act of 1929, § 26-51-101 et seq., the premium tax imposed by § 23-75-119, or  
27 the premium tax imposed by § 23-63-1614 for one hundred percent (100%) of a  
28 contribution made by the eligible taxpayer for a tax year.

29                   (b)(1) An income tax credit under this section may not exceed one  
30 hundred percent (100%) of the tax due for the taxable year after the  
31 application of any other allowable income tax credits by the eligible  
32 taxpayer.

33                   (2) An income tax credit under this section shall be reduced by  
34 the difference between the amount of tax taking into account the income tax  
35 credit under this section and the amount of tax without application of the  
36 income tax credit under this section.

1           (3)(A) For the fiscal year beginning July 1, 2013, the total  
2 amount of income tax credits and carry forward of income tax credits for the  
3 state under this section is limited to ten million dollars (\$10,000,000).

4           (B)(i) For fiscal years beginning on and after July 1,  
5 2014, the total amount of tax credits allowed under this section is the  
6 amount for the preceding fiscal year.

7           (ii) However, the total amount of credits allowed  
8 under subdivision (b)(3)(B)(i) of this section may be increased by up to  
9 thirty-five percent (35%) if at least ninety percent (90%) of the total  
10 amount of tax credits allowed for the preceding fiscal year was claimed.

11           (4) An eligible taxpayer that files an Arkansas consolidated  
12 return as a member of an affiliated group under § 26-51-805 may be allowed  
13 the income tax credit under this section on a consolidated return basis  
14 subject to the limitation established under subdivisions (b)(1)-(3) of this  
15 section.

16           (5)(A) An eligible taxpayer may rescind all or part of the  
17 eligible taxpayer's allocated income tax credit under this section.

18           (B) The amount rescinded under subdivision (b)(5)(A) of  
19 this section shall become available for purposes of the cap for the state  
20 fiscal year under this section to an eligible taxpayer as approved by the  
21 Department of Finance and Administration if:

22           (i) The eligible taxpayer receives notice from the  
23 department that the rescission has been accepted by the department; and

24           (ii) The eligible taxpayer has not previously  
25 rescinded any or all of the eligible taxpayer's allocated income tax credit  
26 under this section more than one (1) time in the previous three (3) tax  
27 years.

28           (C) Any amount rescinded under this subdivision (b)(5)  
29 shall become available to an eligible taxpayer on a first-come, first-served  
30 basis based on income tax credit applications received after the date the  
31 rescission is accepted by the department.

32           (6)(A) For a contribution to be eligible for the income tax  
33 credit allowed under this section:

34           (i) The eligible taxpayer shall make a pledge to the  
35 nonprofit scholarship-funding organization for the contribution;

36           (ii) The nonprofit scholarship funding organization

1 shall submit each pledge for a contribution received under subdivision  
2 (b)(6)(A)(i) of this section to the department within one (1) business day of  
3 receiving the pledge;

4 (iii) The department shall determine whether a  
5 pledge for a contribution is eligible under subdivision (b)(3) of this  
6 section and shall notify the nonprofit scholarship-funding organization of  
7 the approval or disapproval of the pledge for a contribution within ten (10)  
8 business days of receiving the pledge for a contribution under subdivision  
9 (b)(6)(A)(ii) of this section;

10 (iv) The nonprofit scholarship-funding organization  
11 shall notify the eligible taxpayer of the department's determination under  
12 subdivision (b)(6)(A)(iii) of this section within two (2) business days of  
13 receiving notification from the department;

14 (v) The eligible taxpayer shall pay the amount of  
15 the contribution pledged under subdivision (b)(6)(A)(i) of this section:

16 (a) Within sixty (60) days if the eligible  
17 taxpayer is a business entity; or

18 (b) Within thirty (30) days if the eligible  
19 taxpayer is an individual; and

20 (vi) The nonprofit scholarship-funding organization  
21 shall notify the department of each contribution paid under subdivision  
22 (b)(6)(A)(v) of this section within two (2) business days of receiving  
23 payment of the contribution.

24 (B) A pledge for a contribution is not considered in the  
25 total amount of income tax credits for purposes of subdivision (b)(3) of this  
26 section until the eligible taxpayer has paid the contribution to the  
27 nonprofit scholarship funding organization under subdivision (b)(6)(A)(v) of  
28 this section.

29 (c)(1)(A) If the income tax credit under this section is not fully  
30 used in any one (1) year because of insufficient tax liability on the part of  
31 the eligible taxpayer, the unused amount may be carried forward for a period  
32 not to exceed ten (10) years.

33 (B) An eligible taxpayer that seeks to carry forward an  
34 unused amount of the income tax credit under this section shall submit an  
35 application for allocation of tax credits or carry-forward credits as

1 required in subsection (b) of this section in the year that the eligible  
2 taxpayer intends to use the carry forward.

3 (C) This carry forward applies to all approved  
4 contributions made after July 1, 2013.

5 (2) An eligible taxpayer may not convey, assign, or transfer the  
6 income tax credit under this section to another entity unless all of the  
7 assets of the eligible taxpayer are conveyed, assigned, or transferred in the  
8 same transaction.

9 (d) An eligible taxpayer claiming a credit granted under this section  
10 shall not take a deduction under the Arkansas income tax law or the premium  
11 tax law for the same contribution.

12  
13 26-51-2605. Department of Finance and Administration – Duties.

14 The Department of Finance and Administration shall:

15 (1) Annually verify the eligibility of expenditures as provided  
16 in § 6-18-1904(4) using the audit required under § 6-18-1904(13);

17 (2) Determine the eligibility of each pledge for a contribution  
18 to a nonprofit scholarship-funding organization on a first-come, first-served  
19 basis within ten (10) days of receiving the pledge for a contribution from a  
20 nonprofit scholarship-funding organization up to the limitation stated in §  
21 26-51-2604(b)(3);

22 (3) Develop a system for tracking the order in which pledges for  
23 contributions are received, including pledges for contributions that are  
24 received after the limitation stated in § 26-51-2604(b)(3) has been reached;

25 (4) Notify each nonprofit scholarship-funding organization when  
26 the limitation stated in § 26-51-2604(b)(3) has been reached;

27 (5) Adopt rules necessary to administer this subchapter,  
28 including without limitation rules establishing application forms and  
29 procedures and governing the allocation of tax credits and carry forward  
30 credits under this section on a first-come, first-served basis; and

31 (6) In cooperation with the Department of Education, develop a  
32 cooperative agreement to assist in the administration of this subchapter and  
33 the K-12 Scholarship Tax Credit Act, § 6-18-1901 et seq.

34  
35 26-51-2606. Limitations on scholarships – Payment of scholarships.

1           (a)(1)(A) The amount of a scholarship provided to a student for any  
2 single school year by a nonprofit scholarship-funding organization from  
3 contributions shall not exceed four thousand dollars (\$4,000) for a  
4 scholarship awarded to a student enrolled in an eligible private school in  
5 the first year of the scholarship program.

6                   (B) An increase in foundation funding aid under § 6-20-  
7 2305 shall result in an equal percentage increase in the maximum scholarship  
8 amount.

9                   (2)(A) Payment of the scholarship by the nonprofit scholarship-  
10 funding organization shall be by an individual scholarship warrant made  
11 payable to the student's parent or guardian.

12                   (B) If the parent or guardian chooses to have his or her  
13 child attend an eligible private school, the scholarship warrant shall be  
14 delivered by the nonprofit scholarship-funding organization to the eligible  
15 private school of the parent's or guardian's choice, and the parent or  
16 guardian shall restrictively endorse the scholarship warrant to the eligible  
17 private school.

18                   (C) A nonprofit scholarship-funding organization shall  
19 ensure that the parent or guardian to whom the scholarship warrant is made  
20 restrictively endorses the scholarship warrant to the eligible private school  
21 for deposit into the scholarship account of the eligible private school.

22                   (b) A nonprofit scholarship-funding organization shall obtain  
23 verification from the eligible private school of an eligible student's  
24 continued attendance at the eligible private school before each scholarship  
25 payment.

26                   (c) Payment of the scholarship shall be made by the nonprofit  
27 scholarship-funding organization at least monthly.

28                   (d) An eligible taxpayer making a contribution may not designate a  
29 specific child as the beneficiary of the contribution.

30  
31           SECTION 2. Arkansas Code Title 6, Chapter 18, is amended to add an  
32 additional subchapter to read as follows:

33                   Subchapter 19 – K-12 Scholarship Tax Credit Act

34  
35                   6-18-1901. Title.



1       This chapter shall be known and may be cited as the “K-12 Scholarship  
2 Tax Credit Act”.

3  
4       6-18-1902. Purpose.

5       The purpose of this subchapter is to:

6               (1) Supplement the K-12 Scholarship Contribution Tax Credit Act,  
7 § 26-51-2601 et seq.;

8               (2) Expand educational opportunities for children of families  
9 that have limited financial resources; and

10              (3) Enable children in this state to achieve a higher level of  
11 excellence in their education.

12  
13       6-18-1903. Definitions.

14       As used in this chapter:

15              (1) “Contribution” means a monetary contribution from an  
16 eligible taxpayer, subject to the restrictions provided in the K-12  
17 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq., to a nonprofit  
18 scholarship-funding organization;

19              (2) “Eligible private school” means a nonpublic school that:

20                      (A) Provides education to elementary or secondary  
21 students;

22                      (B) Has notified the Department of Education of its  
23 intention to participate and comply with the requirements of this subchapter  
24 and the K-12 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq.;

25                      (C) Is located in Arkansas; and

26                      (D) Is not a home school as defined in § 6-15-501;

27              (3)(A) “Eligible student” means a student who:

28                      (i) Meets one (1) of the following criteria:

29                              (a) Is a member of a household whose total  
30 annual income the year before he or she applies for an educational  
31 scholarship under the K-12 Scholarship Contribution Tax Credit Act, § 26-51-  
32 2601 et seq., does not exceed an amount equal to two hundred fifty percent  
33 (250%) of the federal poverty level income standard;

34                              (b) Received a scholarship from a nonprofit  
35 scholarship-funding organization or from the state during the previous school

1 year and has not graduated from high school or reached twenty-one (21) years  
2 of age; or

3 (c) Is a sibling of a student who meets the  
4 requirement stated in subdivision (3)(A)(i)(b) of this section;

5 (ii) Is residentially zoned in a school district  
6 with a student enrollment that exceeds one thousand (1,000) students; and

7 (iii) Meets one (1) of the following criteria:

8 (a) Is eligible to attend a public school in  
9 Arkansas for the first time;

10 (b) For a student participating in the  
11 scholarship program for the first time in the 2013-2014 school year, was  
12 counted in public school enrollment in Arkansas through the fiscal year  
13 three-quarter average daily membership of the 2011-2012 school year or the  
14 2012-2013 school year;

15 (c) For a student participating in the  
16 scholarship program for the first time in the 2013-2014 school year, was  
17 eligible to enroll in an Arkansas public school for the first time in the  
18 2012-2013 school year; or

19 (d) For a student participating in the  
20 scholarship program for the first time after the 2013-2014 school year, was  
21 enrolled in a public school in Arkansas through the fiscal year three-quarter  
22 average daily membership of the preceding school year.

23 (B) "Eligible student" does not mean a student who:

24 (i) Receives a scholarship from another nonprofit  
25 scholarship-funding organization under this subchapter;

26 (ii) Participates in a home school as defined in §  
27 6-15-501;

28 (iii) Participates in a virtual school,  
29 correspondence school, or distance learning program that receives state  
30 funding pursuant to the student's participation unless the participation is  
31 limited to no more than two (2) courses per school year; or

32 (iv) Is enrolled in the Arkansas School for the Deaf  
33 or the Arkansas School for the Blind;

34 (4) "Nonprofit scholarship-funding organization" means a  
35 charitable organization that:

1                   (A) Is exempt from federal income tax under 26 U.S.C. §  
2 501(c)(3) of the Internal Revenue Code, as it existed on January 1, 2013;

3                   (B) Is an Arkansas entity formed under § 4-28-101 et seq.  
4 whose principal office is located in the state; and

5                   (C) Has notified the Department of Education of its  
6 intention to participate and comply with the requirements of this subchapter  
7 and the K-12 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq.;

8                   (5) “Owner” or “operator” means:

9                   (A) An owner, president, officer, or director of a  
10 nonprofit scholarship-funding organization or a person with equivalent  
11 decision-making authority over a nonprofit scholarship-funding organization;  
12 or

13                   (B) An owner, operator, superintendent, or principal of an  
14 eligible private school or a person with equivalent decision-making authority  
15 over an eligible private school;

16                   (6) “Scholarship program” means a program that awards  
17 scholarships that are funded by contributions made under this subchapter and  
18 the K-12 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq.; and

19                   (7) “Tuition expenses” means the tuition and fees required for  
20 attendance at an eligible private school, including without limitation the  
21 costs associated with transportation.

22  
23                   6-18-1904. Nonprofit scholarship-funding organization – Requirements.

24                   A nonprofit scholarship-funding organization:

25                   (1) Shall comply with the antidiscrimination provisions of 42  
26 U.S.C. § 2000d, as it existed on January 1, 2013;

27                   (2) Shall comply with the following background check  
28 requirements:

29                   (A)(i) All owners and operators, upon employment or  
30 engagement to provide services, shall undergo fingerprinting and a background  
31 check through the Department of Arkansas State Police and the Federal Bureau  
32 of Investigation.

33                   (ii) The nonprofit scholarship-funding organization  
34 shall provide the results of the state and national criminal history check to  
35 the Department of Education for screening;

1                   (B) Every five (5) years following employment with,  
2 engagement to provide services for, or association with a nonprofit  
3 scholarship-funding organization, each owner or operator shall comply with  
4 another background check through the Department of Arkansas State Police and  
5 the Federal Bureau of Investigation;

6                   (C)(i) All fingerprints submitted to the Department of  
7 Arkansas State Police as required by this subdivision (2) shall be retained  
8 by the Department of Arkansas State Police in a manner approved by rule and  
9 entered into the statewide automated fingerprint identification system.

10                   (ii) The fingerprints shall be available for all  
11 purposes and uses authorized by law for arrest fingerprint cards entered into  
12 the statewide automated fingerprint identification system;

13                   (D)(i) The Department of Arkansas State Police shall  
14 search all arrest fingerprint cards against the fingerprints retained in the  
15 statewide automated fingerprint identification system.

16                   (ii) An arrest record that is identified with an  
17 owner's or operator's fingerprints shall be reported to the Department of  
18 Education.

19                   (iii) The Department of Arkansas State Police may  
20 adopt a rule setting the amount of the annual fee to be paid by the  
21 Department of Education for performing the services under this subdivision  
22 (2) and establishing the procedures for the retention of owner and operator  
23 fingerprints and the dissemination of search results; and

24                   (E) A nonprofit scholarship-funding organization is not  
25 eligible to provide scholarships under this subchapter if:

26                   (i) The owner or operator of the nonprofit  
27 scholarship-funding organization does not provide a satisfactory background  
28 check; or

29                   (ii) In the last seven (7) years, the owner or  
30 operator of the nonprofit scholarship-funding organization has has filed for  
31 personal bankruptcy or corporate bankruptcy in a corporation of which he or  
32 she owned more than twenty percent (20%);

33                   (3) Shall not have an owner or operator who owns or operates an  
34 eligible private school that is participating in a scholarship program  
35 operated by a nonprofit scholarship-funding organization;

1           (4) Shall provide scholarships from contributions to eligible  
2 students for the lesser of the maximum scholarship amount or the full cost of  
3 tuition expenses;

4           (5) Shall give priority to an eligible student who previously  
5 received a scholarship from a nonprofit scholarship-funding organization;

6           (6) Shall give priority to the sibling or siblings of an  
7 eligible student who has received a scholarship under the scholarship program  
8 and is currently enrolled in a private school through the scholarship  
9 program;

10          (7) Shall provide a scholarship to an eligible student through a  
11 random and anonymous student selection method unless the eligible student  
12 qualifies for priority under subdivision (5) or (6) of this section;

13          (8) Shall not restrict or reserve scholarships for use at a  
14 particular private school;

15          (9) Shall allow an eligible student to attend any eligible  
16 private school and shall allow a parent or guardian of an eligible student to  
17 transfer a scholarship during a school year to any other eligible private  
18 school of the parent's or guardian's choice if the eligible student was  
19 excused by the current eligible private school for illness or other good  
20 cause;

21          (10)(A) Except as otherwise provided in this section, shall  
22 obligate one hundred percent (100%) of the contributions to provide full-year  
23 or partial-year scholarships to eligible private schools in the fiscal year  
24 in which the contribution was received.

25                (B) Up to twenty-five percent (25%) of the total  
26 contribution may be carried forward for expenditure in the following state  
27 fiscal year.

28                (C) A nonprofit scholarship-funding organization, before  
29 granting a scholarship for an academic year, shall document each eligible  
30 student's scholarship eligibility for that academic year.

31                (D) A nonprofit scholarship-funding organization shall not  
32 grant multiyear scholarships in one (1) approval process.

33                (E) Up to eight percent (8%) of contributions may be used  
34 for administrative expenses of the nonprofit scholarship-funding  
35 organization.

1                   (F) All interest accrued from contributions shall be used  
2 for scholarships;

3                   (11) Shall maintain separate accounts for scholarship funds and  
4 operating funds;

5                   (12)(A) With the prior approval of the Department of Finance and  
6 Administration, may transfer funds to another nonprofit scholarship-funding  
7 organization if additional funds are required to meet scholarship demand at  
8 the receiving nonprofit scholarship-funding organization.

9                   (B) A transfer under subdivision (12)(A) of this section  
10 shall be limited to the greater of five hundred thousand dollars (\$500,000)  
11 or twenty percent (20%) of the total contributions received by the nonprofit  
12 scholarship-funding organization making the transfer.

13                   (C) All funds transferred under subdivision (12)(A) of  
14 this section shall be deposited by the receiving nonprofit scholarship-  
15 funding organization into its scholarship accounts.

16                   (D) All transferred amounts received by a nonprofit  
17 scholarship-funding organization shall be disclosed separately in the annual  
18 financial and compliance audit required under subdivision (13) of this  
19 section;

20                   (13)(A) Shall provide to the Department of Finance and  
21 Administration an annual financial and compliance audit of its accounts and  
22 records conducted by an independent certified public accountant.

23                   (B) The audit required under subdivision (13)(A) of this  
24 section shall be conducted in compliance with generally accepted auditing  
25 standards and shall include the following:

26                   (i) A report on financial statements presented in  
27 accordance with generally accepted accounting principles set forth by the  
28 American Institute of Certified Public Accountants for not-for-profit  
29 organizations; and

30                   (ii) A determination of compliance with the  
31 statutory eligibility and expenditure requirements stated in this section.

32                   (C) Each audit required under subdivision (13)(A) of this  
33 section shall be provided to the Department of Finance and Administration  
34 within one hundred eighty (180) days after completion of the nonprofit  
35 scholarship-funding organization's fiscal year;

1           (14) Shall prepare and submit quarterly reports to the  
2 Department of Finance and Administration;

3           (15)(A) Shall submit in a timely manner any information  
4 requested by the Department of Education relating to the scholarship program.

5           (B) Information submitted to the Department of Education  
6 under subdivision (15)(A) of this section shall be made available on the  
7 website maintained by the nonprofit scholarship-funding organization;

8           (16) Shall establish a website that provides parents, guardians,  
9 and private schools with information on participation in the scholarship  
10 program;

11           (17) Shall not provide scholarships to a child of an owner or  
12 operator;

13           (18) Shall provide annually to the parent or guardian of each  
14 eligible student who participates in a scholarship program a copy of the  
15 results of the nationally recognized norm-referenced test taken by the  
16 student;

17           (19) Shall report eligible student information to the Department  
18 of Education that would allow the Department of Education to aggregate  
19 student data by grade level, gender, family income level, and race;

20           (20) Shall publish the graduation rates of eligible students who  
21 participate in a scholarship program;

22           (21)(A) Shall provide to the Department of Education by August 1  
23 each year the name of each eligible student who received a scholarship for  
24 the upcoming school year and the name of the eligible student's previous  
25 school district or charter school.

26           (B) The nonprofit scholarship-funding organization shall  
27 provide verification to the Department of Education that each eligible  
28 student has been awarded a scholarship under the scholarship program and has  
29 enrolled in an eligible private school for the upcoming school year;

30           (22) Shall require and retain an annual notarized and sworn  
31 compliance statement by each participating eligible private school,  
32 certifying compliance with state laws;

33           (23) Shall cross-check the list of participating scholarship  
34 students with the public school enrollment lists to avoid duplication;

35           (24) Shall annually verify the eligibility of private schools  
36 under § 6-18-1906;

1           (25)(A) Shall establish a process by which individuals may  
2 notify the nonprofit scholarship-funding organization of a violation of this  
3 subchapter by a parent, guardian, eligible private school, or school  
4 district.

5           (B)(i) The nonprofit scholarship-funding organization  
6 shall conduct an inquiry of any written complaint of a violation of this  
7 subchapter or make a referral to the appropriate agency for an investigation  
8 if the complaint is signed by the complainant and is legally sufficient.

9           (ii) A complaint is legally sufficient if it alleges  
10 facts that constitute a violation of this section.

11           (iii) In order to determine legal sufficiency, the  
12 nonprofit scholarship-funding organization may require supporting information  
13 or documentation from the complainant;

14           (26)(A) Shall conduct unscheduled site visits to eligible  
15 private schools participating in a scholarship program.

16           (B) The purpose of an unscheduled site visit under  
17 subdivision (26)(A) of this section is solely to verify the information  
18 reported by an eligible private school concerning the enrollment and  
19 attendance of students, background screening of teachers, and teachers'  
20 fingerprinting results.

21           (C) The nonprofit scholarship-funding organization shall  
22 not make more than one (1) unscheduled site visit each year to the same  
23 eligible private school.

24           (27) Shall report annually by December 15 to the Governor, the  
25 President Pro Tempore of the Senate, and the Speaker of the House of  
26 Representatives the nonprofit scholarship-funding organization's actions with  
27 respect to the following:

28           (A) The nonprofit scholarship-funding organization's  
29 implementation of accountability standards in the scholarship program under  
30 this section; and

31           (B) Any substantiated allegations of a violation of law or  
32 rule by an eligible private school under this subchapter concerning the  
33 enrollment and attendance of students, background screening of teachers, or  
34 teachers' fingerprinting results and the corrective action taken by the  
35 nonprofit scholarship-funding organization;



1           (28)(A)(i) Shall deny, suspend, or revoke an eligible private  
2 school's participation in the scholarship program according to the policies  
3 and procedures adopted by the nonprofit scholarship-funding organization if  
4 the nonprofit scholarship-funding organization determines that the eligible  
5 private school has failed to comply with this subchapter.

6                   (ii) However, if the noncompliance is correctable  
7 within a reasonable amount of time and the health, safety, or welfare of the  
8 students is not threatened, the nonprofit scholarship-funding organization  
9 may issue a notice of noncompliance that provides the eligible private school  
10 with a deadline by which to provide evidence of compliance before the  
11 nonprofit scholarship-funding organization takes action to suspend or revoke  
12 the eligible private school's participation in a scholarship program.

13                   (B) The nonprofit scholarship-funding organization's  
14 determination is subject to the following:

15                           (i)(a) If the nonprofit scholarship-funding  
16 organization intends to deny, suspend, or revoke an eligible private school's  
17 participation in a scholarship program, the nonprofit scholarship-funding  
18 organization shall notify the eligible private school of the proposed action  
19 in writing by certified mail to the eligible private school's address of  
20 record with the nonprofit scholarship-funding organization.

21                                   (b) The notification shall include the reasons  
22 for the proposed action and notice of the timelines and procedures stated in  
23 this subdivision (28); and

24   (ii) The eligible private school that is adversely  
25 affected by the proposed action may appeal the decision to the Department of  
26 Finance and Administration.

27                   (C) The nonprofit scholarship-funding organization may  
28 suspend payment of scholarship funds if it is determined that there is cause  
29 to believe that there is:

30                                   (i) An imminent threat to the health, safety, or  
31 welfare of the students; or

32   (ii) Fraudulent activity on the part of the eligible  
33 private school.

34                   (D) In incidents of alleged fraudulent activity, the  
35 nonprofit scholarship-funding organization may release personally

1 identifiable records or reports of students to the following persons or  
2 organizations:

3 (i) A court of competent jurisdiction in compliance  
4 with an order of that court or the attorney of record in accordance with a  
5 lawfully issued subpoena, consistent with the Family Educational Rights and  
6 Privacy Act, 20 U.S.C. § 1232g, as it existed on January 1, 2013;

7 (ii) A person or entity authorized by a court of  
8 competent jurisdiction in compliance with an order of that court or the  
9 attorney of record under a lawfully issued subpoena, consistent with the  
10 Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, as it existed  
11 on January 1, 2013; and

12 (iii) Any person, entity, or authority issuing a  
13 subpoena for law enforcement purposes when the court or other issuing agency  
14 has ordered that the existence or the contents of the subpoena or the  
15 information furnished in response to the subpoena not be disclosed,  
16 consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. §  
17 1232g, as in effect of January 1, 2013, and 34 C.F.R. § 99.31, as it existed  
18 January 1, 2013.

19 (E) The nonprofit scholarship-funding organization's order  
20 suspending payment under this subdivision (28) may be appealed under the  
21 policies and procedures adopted by the nonprofit scholarship-funding  
22 organization;

23 (29) Shall accept pledges for contributions under § 26-51-2604;

24 (30) Within one (1) business day of receiving a pledge for a  
25 contribution under § 26-51-2604, shall submit the pledge for a contribution  
26 to the Department of Finance and Administration in the order in which the  
27 pledge was received;

28 (31) Shall notify each eligible taxpayer of the Department of  
29 Finance and Administration's determination as to the eligibility of a pledge  
30 for a contribution in writing within two (2) business days of receiving  
31 notice from the Department of Finance and Administration concerning the  
32 eligibility of the pledge for a contribution;

33 (32) Shall notify the Department of Finance and Administration  
34 of the receipt of contributions under § 26-51-2604(b)(6)(A)(v) within one (1)  
35 business day of receiving the contribution; and

1       (33) Shall adopt policies and procedures as necessary to perform its  
2 duties under this subchapter.

3  
4       6-18-1905. Requirements for eligible students and parents and  
5 guardians of eligible students.

6       (a)(1) To qualify a child for a scholarship from a nonprofit  
7 scholarship-funding organization, a parent or guardian shall select an  
8 eligible private school and apply for the admission of his or her child.

9       (2) The parent or guardian shall inform the child's school  
10 district when the parent or guardian withdraws his or her child to attend an  
11 eligible private school.

12       (b)(1) Upon receipt of a scholarship warrant from the nonprofit  
13 scholarship-funding organization under § 26-51-2606, the parent or guardian  
14 to whom the scholarship warrant is issued shall restrictively endorse the  
15 scholarship warrant to the eligible private school for deposit into the  
16 scholarship account of the eligible private school.

17       (2) The parent or guardian shall not designate an entity or  
18 individual associated with the participating eligible private school as the  
19 parent's or guardian's attorney-in-fact to endorse a scholarship warrant.

20       (3) A parent or guardian who fails to comply with this  
21 subsection forfeits the scholarship on behalf of the eligible student.

22       (c) A student participating in the scholarship program shall remain in  
23 attendance throughout the school year unless excused by the eligible private  
24 school for illness or other good cause.

25       (d) Each parent or guardian and each eligible student shall comply  
26 with the eligible private school's published policies.

27  
28       6-18-1906. Eligible private school – Requirements.

29       (a) An eligible private school may be sectarian or nonsectarian and  
30 shall:

31       (1) Comply with all requirements for private schools  
32 participating in state school choice scholarship programs;

33       (2) Provide to the nonprofit scholarship-funding organization,  
34 upon request, all documentation required for the student's participation,  
35 including the eligible private school's and student's fee schedules;

1           (3) Identify and select the nationally recognized norm-  
2 referenced tests that measure learning gains in math and language arts for  
3 the students in the grades that require testing under the Arkansas  
4 Comprehensive Testing, Assessment, and Accountability Program Act, § 6-15-401  
5 et seq.;

6           (4) Be academically accountable to the parent or guardian for  
7 meeting the educational needs of the student by:

8                   (A) Annually providing to the parent or guardian a written  
9 explanation of the student's progress; and

10                   (B)(i) Annually administering or making provision for  
11 students participating in the scholarship program to take a nationally  
12 recognized norm-referenced test.

13                           (ii)(a) A student with a disability for whom  
14 standardized testing is not appropriate as stated in the student's  
15 individualized education plan is exempt from the requirement under  
16 subdivision (a)(4)(B)(i) of this section.

17                                   (b) However, if a student is exempt under  
18 subdivision (a)(4)(B)(ii)(a) of this section, the participating eligible  
19 private school shall prepare annually a portfolio that provides information  
20 regarding the student's progress to the parent or guardian.

21                                   (iii) A participating eligible private school shall  
22 report a student's standardized test scores to the parent or guardian and to  
23 the qualified researcher selected by the Department of Education as described  
24 in § 6-18-1907(1) under the Family Educational Rights and Privacy Act, 20  
25 U.S.C. § 1232g, as it existed on January 1, 2013;

26                   (5) Comply with all requirements and laws for private schools in  
27 Arkansas; and

28                   (6) Demonstrate financial viability if the eligible private  
29 school is to receive contributions of at least fifty thousand dollars  
30 (\$50,000) during a school year by filing with the nonprofit scholarship-  
31 funding organization before the beginning of the school year:

32                           (A) A surety bond payable to the nonprofit scholarship-  
33 funding organization in an amount equal to the aggregate amount of  
34 contributions received the prior year; or

35                           (B) Financial information that demonstrates the financial  
36 viability of the eligible private school.

1           (b) The inability of an eligible private school to meet the  
2 requirements of this section constitutes a basis for the revocation of the  
3 private school's eligibility to participate in a scholarship program by the  
4 nonprofit scholarship-funding organization.

5  
6           6-18-1907. Department of Education – Duties.

7           The Department of Education shall:

8                   (1)(A) Contract and cooperate with one (1) or more qualified  
9 researchers who have previous experience evaluating school choice programs to  
10 study the scholarship program created under this subchapter and the K-12  
11 Scholarship Contribution Tax Credit Act, § 26-51-2601 et seq.

12                   (B) The Department of Education may use any funds  
13 available to it to fund the study required under this subdivision (1).

14                   (C) The study required under this subdivision (1) shall  
15 assess the following:

16                           (i) Parents' and guardians' satisfaction with the  
17 scholarship program;

18                           (ii) Socioeconomic data for the families of the  
19 eligible students participating in the scholarship program;

20                           (iii) The fiscal impact of the scholarship program  
21 in relation to the state and to the families of the eligible students  
22 participating in the scholarship program;

23                           (iv) The impact of the scholarship program on public  
24 school districts, public school students, and the quality of life in the  
25 relevant communities;

26                           (v) The impact of the scholarship program on the  
27 capacity, availability, and quality of public and private schools; and

28                           (vi) The academic performance and graduation rate of  
29 the eligible students participating in the scholarship program.

30                   (D) The qualified researchers conducting the study  
31 required under this subdivision (1) shall:

32                           (i) Apply appropriate analytical and behavioral  
33 science methodologies to promote and ensure public confidence in the study;

34                           (ii) When possible, develop the comparison group of  
35 eligible students participating in the scholarship program based on random  
36 assignment methodology, which is feasible if the scholarship program receives

1 a significant number of applications over the number of available  
2 scholarships or openings in eligible private schools;

3 (iii) If the random assignment methodology is not  
4 feasible, measure the performance of the eligible students participating in  
5 the scholarship program against the performance of similar students with  
6 respect to academic achievement and, when possible, demographic factors,  
7 including without limitation poverty level, race, and ethnicity;

8 (iv) Protect the identity of the participating  
9 schools and students by taking appropriate measures, including without  
10 limitation maintaining the anonymity of disaggregated data other than grade  
11 level, gender, race, and ethnicity;

12 (v) Provide a final copy of the study required under  
13 this subdivision (2) to the General Assembly and each nonprofit scholarship-  
14 funding organization; and

15 (vi) Make the data and methodology from the study  
16 available for public review subject to the requirements of the Family  
17 Educational Rights and Privacy Act, 20 U.S.C. § 1232g, as it existed on  
18 January 1, 2013.

19 (E) The General Assembly may require periodic reports from  
20 the qualified researchers conducting the study required under this  
21 subdivision (2).

22 (2) Remove the eligible students from the list provided by a  
23 nonprofit scholarship-funding organization under § 6-18-1904(21) from the  
24 fiscal year three-quarter average daily membership used to determine school  
25 funding under § 6-20-2305;

26 (3) By July 15, 2013, and by March 15 each year thereafter, list  
27 the nonprofit scholarship-funding organizations;

28 (4) Verify annually the eligibility of nonprofit scholarship-  
29 funding organizations;

30 (5) Notify a nonprofit scholarship-funding organization of any  
31 of the nonprofit scholarship-funding organization's identified students who  
32 are receiving corporate income tax credit scholarships from other nonprofit  
33 scholarship-funding organizations;

34 (6) Require quarterly reports by a nonprofit scholarship-funding  
35 organization regarding the number of students participating in the

1 scholarship program and the eligible private schools at which the students  
2 are enrolled;

3 (7) Adopt rules necessary to administer this subchapter; and

4 (8) In cooperation with the Department of Finance and  
5 Administration, develop a cooperative agreement to assist in the  
6 administration of this subchapter and the K-12 Scholarship Contribution Tax  
7 Credit Act, § 26-51-2601 et seq.

8

9 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the  
10 General Assembly of the State of Arkansas that attendance at a private school  
11 is often cost prohibitive for many Arkansas children; that these children  
12 should be allowed to attend the school that best meets their educational  
13 needs; that providing scholarships would allow many children to attend  
14 private schools who are not currently financially able to do so; that  
15 allowing an income tax credit would encourage donations that could be used  
16 for scholarships for these children; and that this act is necessary to  
17 provide the relevant state agencies, private schools, and scholarship-funding  
18 organizations with sufficient time to adequately prepare to establish  
19 scholarships for the 2013-2014 school year. Therefore, an emergency is  
20 declared to exist, and this act being necessary for the preservation of the  
21 public peace, health, and safety shall become effective on July 1, 2013.

22

23 */s/J. English*

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26 Referred by the Arkansas Senate

27 Prepared by: JLL/VJF

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